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In re Application of
Byron Young
Application No. 10/028,853
Filed: December 21, 2001

: DECISION ON
: RENEWED PETITION
: TO WITHDRAW
: HOLDING OF
: ABANDONMENT

For: BAG/BED ASSEMBLY

This is a decision on Applicant's petition to accept late papers, filed May 10, 2005, and Applicant's renewed petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO) on January 7, 2005.

These petitions are **GRANTED**.

A review of the file record reveals that the application became abandoned for failure to respond to the Office Action (Notice of Allowance and Issue Fee Due) mailed to applicant on January 12, 2004. A Notice of Abandonment was mailed on May 26, 2004.

Applicant's petition indicates that the Office Action was never received. Applicant states that a renewed petition to withdraw the holding of abandonment was timely filed on January 7, 2005.

Regarding the timely filing of the renewed petition, Petitioner's evidence of a timely filing based on a Certificate of Mailing is considered to be sufficient. In this regard, any petition to withdraw the holding of abandonment based upon a Certificate of Mailing must include the following requirements:

- (1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and

- (2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the original response on the date indicated on the Certificate of Transmission (see 37 CFR 1.8 and MPEP 512), by the person who signed the certificate.

Applicant submitted (on May 10, 2005) a copy of the renewed petition including a certificate of mailing signed by Gary K. Price. Also included was a statement by Mr. Price that the renewed petition was mailed on January 7, 2005.

Regarding the non-receipt of the Office Action, there is a strong presumption that the Office communication, properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

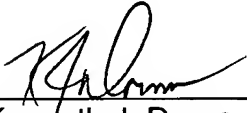
The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating that the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of April 12, 2004. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993).

Practitioner submits a statement that the above-noted Office Action was not received. Practitioner also attests to the fact that a search of the file jacket and docket records indicates that the Office Action was not received. Applicant's petition provides a copy of the docket record showing all responses due by practitioner's office between the dates of March 18, 2004 and August 12, 2004. This evidence is acceptable proof of non-receipt as provided by 1156 OG 53.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the abandonment, return the application to pending status based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513.

A handwritten signature in black ink, appearing to read 'K. Dorner', is positioned above a horizontal line.

Kenneth J. Dorner
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KJD/js: 7/27/05